IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH
AT HYDERABAD.

THE HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
THE HONOURABLE SRI JUSTICE D.APPARAO

W.A.Nos.1285 of 2004, 2113 of 2004 and 2114 of 2004

Dated: 14 .07.2006

W.A. No. 1285 of 2004

Between:-

1) T. Ashok Raju, L.D.C. O/o Asst. Accounts Officer, E.R.O. NPDCL, Town-I, Karimnagar,
2) P.V. Satyanarayana, L.D.C. O/o Divisional Engineer Operation, NPDCL, Huzurabad,
3) K. Kistaswamy, L.D.C. O/o Divisional Engineer Operation, NPDCL,. Karimnagar,
4) A. Gopala Chary, LDC O/o Asst. Accounts Officer, ERO, NPDCL, Godavarkhani,
5) B. Manoj Kumar, LDC O/o Divisional Engineer Operation, NPDCL, Karimnagar,
6) K. Ram Babus, L.D.C. O/o Asst. Accounts Officer, ERO, NPDCL,. Huzurabad,
7) A. Satyanarayana, LDC, O/o Asst. Accounts Officer, ERO, NPDCL, Peddapalli
8) K. Laxminarayana, LDC, O/o Asst. Accounts Officer, ERO, NPDCL, Karimnagar
9) G. Harikishan Rao, LDC, O/o Divisional Engineer Operation, NPDCL, Karimnagar,
10) V. Krishna Kumari, LDC O/o Asst. Accounts Officer, ERO, NPDCL town, Karimnagar

…Appellants

And

1. The Transmission Corporation of A.P. Ltd., Vidyut Soudha, Hyderabad, represented by its Chairman and Managing Director,
and 21 others.
(Respondents 4 to 8 are not necessary parties in this petition).

…Respondents.

W.A.No. 2113 of 2004

Between:

Northern Power Distribution Company of A.P. Ltd., represented by its Chairman and Managing Director, Warangal.

…Appellant

And

K. Anjaneyulu s/o Rajaiah, aged 34 years, O/o Asst. Accounts Officer, ERO, NPDCL, Godavarikhani and 20 others.

…Respondents

W.A. No. 2114 of 2004

Between:

1. K. Prakash s/o K. Veeresham, aged about 43 years, LDC O/o DE (DPE) NPDCL,. Karimnagar,
2. B. Mohan Reddy s/o Malka Reddy, aged 43 years, LDC O/o Asst. Accounts Officer, ERO, NPDCL, Godavarikhani, Karimnagar District,
3. M. Suvarna w/o Rajeswhar Reddy, aged 43 years, LDC O/o SE (OP) NPDCL, Karimnagar,
4. M. Rajaiah, LDC aged about 43 years, O/o DE (Transformers) NPDCL, Karimnagar.

…

Appellants

And

1. The Transmission Corporation of A.P. Ltd., Vidyut Soudha, Hyderabad represented by its Chairman and Managing Director and 17 others.

…

Respondents.

THE HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
THE HONOURABLE SRI JUSTICE D.APPARAO

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W.A.Nos.1285 of 2004, 2113 of 2004 and 2114 of 2004

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COMMON JUDGMENT:(Per Hon'ble Sri Justice D.Apparao)

The dispute relates to fixation of *inter se* seniority between Lower Division Clerks and Typists for promotion to the post of Upper Division Clerks working in Northern Power Distribution Company.

2. The Northern Power Distribution Company (for short 'NPDC'), by issuing the impugned memo dated 16.07.2002, directed an integrated seniority of Lower Division Clerks and Typists be prepared by taking the date of joining as a trainee for LDCs and the date of joining in service for Typists for promoting them as Upper Division Clerks.

3. As a result of these instructions, the LDCs are to be treated as seniors to the Typists. Aggrieved, the Typists filed Writ Petition No.13685/2002 for quashing the memo dated 16.07.2002, with a direction to NPDC to prepare an integrated list of seniority of LDCs

and Typists duly taking the date of appointment, which counts for probation as the criterion, in accordance with Regulation 26 while considering the promotions to the posts of UDCs.

4. The learned single Judge quashed the said proceedings and opined that it was contrary to Regulation and violation of Section 79 of the Electricity (Supply) Act, 1948. It was held that instructions, dated 02.04.1994 or 16.07.2002 or even the instructions contained in T.O.O.Ms. No. 251, dated 29.01.2001 cannot be considered as a Regulation nor the instructions contained therein impliedly overawe or supplant the statutory regulations 26 of Specifications contained in Annexure IV and directed NPDC (R2) to prepare integrated seniority list of Lower Division Clerks/Junior Assistants, Typists and Steno-Typists and to arrange the persons belonging to the categories an *inter se* order of seniority, in accordance with their respective dates of regular entry into service. It was further directed no L.D.C. who was entered regular service subsequent to a Typist or Steno-Typist is reckoned as Senior to such a Typist or Steno-Typist. Promotions to the post of Upper Division Clerks shall henceforth be in accordance with such integrated seniority list or seniority positions.

5. Aggrieved by the said order, the L.D.Cs, who were not parties to the writ petition filed W.A.No.1285/2004, and the respondents 8, 7, 6 and 4 in the writ petition who are L.D.Cs preferred W.A.No.2114/2004 while the very NPDC filed W.A.No.2113/2004. Their main contention is that there is no regulation dealing with 'integrated seniority list' as such the erstwhile Andhra Pradesh State Electricity Board (for short 'A.P.S.E.B.) issued guidelines under Memo dated 2.4.1994 which was followed by the 2nd respondent (NDPC) reiterating the same by Memo dated 16.7.2002. They were not in conflict with regulation 26. The executive instructions in the absence of rules and regulations govern the field. Equally the learned Judge did not consider that under

regulations 11, Part III read with regulation 12 the posts of Typists and L.D.Cs are inter-changeable. Regulation 24 deals with the promotions. A.P.S.E.Board, which is ultimate repository of all Executive Power besides by exercising its statutory power under Regulation 25 (a) or (b) revise/review the list of approved candidates of the respondents for appointment or promotion. Since the regulation 26 considered in isolation, the learned Single Judge could not appreciate the guidelines issued in the matter of preparation of integrated seniority list. There is a reasonable and rationale basis for exercising the discretion under Regulation 25 (a). The learned Judge by relying Section 79 of the Act, struck down the notification on the ground that it was not published in the gazette as required, ignoring the fact that the notifications issued by a company need not be gazetted. Therefore, they prayed that the order of the learned Single Judge be set aside.

6. At the outset it may be stated that the L.D.Cs were appointed in February, 1991, while the Typists were appointed a month later in March, 1991. However, by virtue of the earlier regulations, the L.D.Cs were directed to undergo training for a period of three months, which did not count towards seniority. As a result, the L.D.Cs after completion of probation relegated in position lower than that of Typists. In other words, the date of appointment was taken as criteria for Typists while date of completion of training was taken as criteria for L.D.Cs. In that process, the L.D.Cs though were appointed in February they were listed below the Typists appointed in the month of March. In the teeth of original regulation, while fixing seniority in the cadre no difficulty would be encountered. However, when different cadres were merged subsequently detriment to some of cadres, the difficulty had arisen. In order to get over this difficulty, various circulars were issued from time to time.

7. The erstwhile A.P. State Electricity Board has been bifurcated into two companies i.e. A.P. Power Generation Corporation Ltd.

(A.P.Genco) and Transmission Corporation of A.P. Ltd. (A.P. Transco) on 01.02.1999 by virtue of A.P. Electricity Reform Act, 1998 and rules framed thereunder. Subsequently, four distribution companies and out of them the 2nd respondent is one of the company constituted as subsidiary companies of A.P. Transco in terms of Section 23 (6) of A.P. Electricity Reform Act, 1998. The respective companies adopted the very same Regulation of the Board. Service Regulations Part-I, II and III are notified in the gazette as required under Section 79 © of the Electricity (Supply) Act, 1948 (Central Act LIV of 1948). The Typists and LDCs are eligible for consideration for promotion to Upper Division Clerks (for short 'UDCs'). Promotions and appointments to the post of UDCs from the categories, *inter alia* of LDCs and Typists the method of promotion is to be on the basis of seniority. Regulation provided that in a Unit of 4 vacancies of UDCs, the third and fourth vacancies are to be filled up by promotion from among the LDCs, Typists and Steno-Typists.

8. Since the dispute is in regard to *inter se* seniority of the Typists and L.D.Cs, we will confine our discussion in the said aspect. There are variety of category of services in the A.P.S.E.B. namely A.P.S.E.Board Personnel & General Services; A.P. State Account Services etc. categorized in part III of Service Regulations.

9. A perusal of these regulations show that as per the regulation 15 direct recruits to the category of L.D.Cs in the Accounts Service are required to undergo training for three months. No such provisions exist in the regulation in respect of same service in Personnel & General Service. In the other words, Junior Assistants and Junior Assistant-cum-Computer operator in the Personnel & General Service are placed on training for a period of three months. No such provision exists in respect of Junior Assistants and Junior Assistant-cum-Computer Operators in the Personnel & General Service. However,

the Typists and Steno-Typists are entitled for promotion to the category of U.D.Cs along with Junior Assistants/Junior Asst-cum-Computer Operators and L.D.Cs respectively from these categories. Consequently, an L.D.C joining on the same day in Accounts Service, the commencement of probation will be delayed by three months because of the training period while the same LDC appointed on Personnel & General Service the probation commences from the day he joins in duty. This is undoubtedly an arbitrary stipulation without any basis.

10. It is important to note that originally U.D.C. posts which were brought into Accounts Service from the Administrative Service by B.P.Ms.No. 637, dated 29.06.1984. Equally, A.P.S.E.B. Secretariat service revised as APSEB P & G Service by B.P.Ms.No. 697, dated 29.06.1984 on the very same day. Annexure VI was added to APSEB, Service Regulations Part-III. Earlier, Typists and Steno-typists categories were in category 4 of class III in APSEB Secretariat Service and in Category 6 in Class III in APSEB Administrative Service. Bill Collectors re-designated as Revenue Cashiers were deleted from category 2 of class III of APSEB General Services and integrated with LDC's as LDC (RCs) vide B.P. Ms.No. 99, dated 29.01.1988. On 18.07.1990 B.P. (P&G) per Ms. No. 174, 175, 176, 177, 178 were issued substituting the earlier provisions in Annexures-I, II, III, IV and V with regard to UDCs, LDCs, Stenos & Typists. On 14.5.1992 by virtue of B.P.(P&G, per) Ms. No. 57, dated 14.5.1992 LDC-cum-Typist-cum-Computer Operator were added as category 4 (b) in class III of APSEB Accounts Service vide B.P. (P&G, per) Ms. No. 57, dated 14.5.1992 renumbering LDC as 4 (a). On 02.04.1994 B.P.Ms.No.33 was issued by the APSEB providing training to other posts including Typists. On 2.4.1994 the APSEB, after having noticed the anomaly in between these cadres in regard to commencement of service, has taken a

policy decision to take into account the training period of three months while preparing the 'integrated seniority list' of LDCs/RCs & Typists, for the purpose of considering their cases for promotion to the post of UDCs.

11. When A.P.S.E.Board intend to integrate all the posts and prepare a single seniority list for promotion to the post of U.D.Cs, they found it difficult. The A.P.S.E.Board as back as 02.04.1994 reconciled this anomaly and issued the following Memo. Since this memo is decisive and no challenge was made by any of the employees all through, we extract the entire memo.

"Andhra Pradesh State Electricity Board
Vidyuth Soudha: Hyderabad

Memo No.DS(B)/DN-VI/Z1/206/93-1 Dated: 2-4-1994

Sub: Training of Junior Assistants and LDCS-Period of training
to be taken for the purpose of preparation of integrated lists of
JAS/LDCs and Typists etc.,-Instructions-Issued.

As per the Regualtion-15 of the Service Regulations part-III direct recruits to the category of Lower Division Clerks in Accounts Service are required to undergo Training for three months. No such provisions exists in the regulation in respect of Junior Assistants and Jr.Asst.Cum-Computer Operators in personnel & General Service. Despite that, those who are directly recruited to the categoring of Junior Assistants and Jr.Asst.cum-Computer operator in the personnel and General Service are placed on training for a period of 3 months. During the said period of three months training they are paid a consolidated amount of Rs.1200/- p.m. as stipend. The period of training does not count either for probation or for increment.

2. The candidates directly recruited to the categories of Typists or Steno-Typists in the Personnel & General Service and in the Accounts Service are not required to undergo any training. Typists and steno typists are entitled

for promotion to the category of Assistants in Personnel & General Services and to the category of Upper Division Clerks in the Accounts service along with Junior Assistants/Jr.Asst.cum-Computer operators and Lower Division Clerks respectively. Though a Typist and Junior Assistant/Junior Asst.cum-Computer Operator or LDC join on the same day, the commencement of probation in respect of Junior Assistants/Junior Asst.cum-Computer Operators or Lower Division Clerks delayed by three months because of the training period while the typist commences his probation from the day he joins for duty.

3. After careful consideration of the matter, the Andhra Pradesh State Electricity Board directs that the Training period of three months for Junior Assistants/Junior Asst.cum-Computer Operators and Lower Division Clerks may be taken into account for the purpose of fixation of integrated seniority list of Junior Assistant/Junior Assistant-cum-Computer Operators Typists and steno typists for the purpose of promotion as Assistant in personal General service and Lower Division Clerks, typists and steno-typists for the purpose of promotion as upper division clerks in Accounts service without disturbing their seniority assigned during the selection for appointment as Junior Assistant/Jr.Asst.Cum-Computer Operators and Lower Division Clerks. They shall however continue to draw during the period of training consolidated emoluments as stipend as per the existing provisions in the Regulations.

H.S.Samha
Member Secretary

All through promotions were effected pursuant to this memo. We reiterate at no time any of the employees in any of the categories questioned the above said relaxation.

12. After formation of 2nd respondent, Northern Power Distribution Company and in view of transfer of the personnel, consequent on constitution of these companies, a clarification was issued under the impugned memo, dated 16.7.2002 which reads as follows:-

NORTHERN POWER DISTRIBUTION COMPANY OF
A.P.LIMITED
WARANGAL

Memo No.CGM(HRD)/GM(S)/AS(IR)/302-H1/02, Dt.16.07.2002

Sub: Estt. – APRPDCL – Counting of training period in respect of
LDCs/RCs for preparing the integrated seniority list of LDCs/RCs and Typists for promotion as UDCs – Clarification –
Issued:

Ref: 1. Memo.No.DS(P)/DM.VI/21/206/93-1, dt.2.4.94
2. T.O.O.(GM(IR)-Per)Ms.No.251, dt.29.1.2001
3. Representation of certain LDCs of Operation Circle, Karimnagar
4. Lr.No.SE/Op/KNR/Estt/D.No.502/02, dt.11.6.02

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The attention of the Superintending Enginner/Opn./Karimnagar is invited to his letter 4th cited and the following clarification is issued on the points raised by him.

i) One must be an Approved Probationer in the cadre from which he is considered for promotion to the next higher cadre. The seniority is the criteria for promotion.

ii) As per the orders issued in Bd's Memo 1st cited, the integrated seniority list of LDCs/RCs/Typists has to be drawn without disturbing their seniority assigned during selection for appointment to that post. The LDCs/RCs and Typists are different categories and having separate seniority lists for each category. For integrating their seniority, the date of joining as Trainee LDCs/RCs in respect of LDCs/RCs and date of joining as Typist in respect of Typists shall be taken as criteria without disturbing their relative seniority in their respective cadres.

iii) The clarification issued in Bd's memo 1st cited holds good as it was issued for the particular purpose of integrating the service of LDCs/RCs and Typists for considering their cases for promotion to the higher cadre.

iv) In respect of panels drawn after issue of clarification in Bd's memo 1st cited, i.e. on or after 2-4-94, it is necessary to include the LDCs appointed prior to 2-4-94

also in the integrated seniority list of LDCs/RCs and Typists, duly following the instructions contained therein.

R.GOPAL REDDY,
CHAIRMAN & MANAGING DIRECTOR,
NPDCL :: WARANGAL

13. It has been settled by long line of decisions of the Supreme Court starting from A. Janardhana v. Union of India[1] case to Bimlesh Tanwar v. State of Haryana[2], that it is an extremely undesirable, unjust and inequitable situation emerging in service jurisprudence from precedents that a person that seniority is to be reckoned may be laid down by rules or instructions. When recruitments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources and if rules are framed in this regard they must be followed strictly. If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule. The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject. Obviously as there is no rule governing preparation of integrated lists of JAC/Typists and LDCs memo dated 2.4.1994 was issued. In this regard Regulation 26 which deals with seniority must be considered.

14. Regulation 26 reads as follows:

"26.Seniority:- (a) The seniority of a person in a class of service, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the Board or other appointing authority as the case may.

Provided that where no ranking has been fixed in respect of any person in a service, class, category or grade, the seniority of such candidate shall be determined by the date of his first appointment to such service, class, category or grade. Left any portion of the service of such person does not count towards probation under regulations 14(c), (e), 19 and 38(b), his seniority shall be determined by the date of commencement of his service which counts towards probation.

15. The learned Single Judge observed that the administrative instructions issued under impugned memorandum is inconsistent with the legal position as obtaining under Regulation 26 read with Specifications in Annexure IV. He also observed that "apropos the provisions of Section 79 of the Act; notification by publication in the Official Gazettee is mandatory for the making of regulations. Since no such notification having been made either Memo dated 2.4.1994 or T.O.O.Ms. No. 251, dated 29.1.2001, it cannot be considered to be a regulation, at any rate, the instructions contained therein could not be conferred that the instructions contained therein impliedly overawe or supplant the statutory regulations in particular Regulation 26 of the specifications contained in Annexure IV."

16. A close reading of the said regulation makes it clear that the seniority of a person would be determined by the date of first appointment where no ranking has been fixed. If a list of approved candidates are drawn up then it will be the rank obtained by him will determine to a person in a class of service category or grade. There is no statutory rules or regulations to deal with the preparation of

integrated seniority list. Obviously the Board did not contemplate the integrating of all these services. Therefore, the Board proceedings by memo, dated 02.04.1994, was issued clarifying that the period of training was not prescribed for some of the categories of Junior Assistants, Junior Assistant-cum-Computer Operators in one service, whereas it was prescribed in the other service. Therefore, it is necessitated issuance of executive instructions by virtue of the powers conferred to it under Regulation 6. The Board can delegate its powers under the Regulation to any of the officers (vide Regulation 5). In fact, the very Board have the right of interpreting the regulations and its decision is final (vide Regulation 4). Regulation 25 (a) and (b) of Part II of Regulations authorizes the Board to revise the list of approved candidates appointed for promotion. It can also review promoting a member or class to a selection category or grade, or approving any list of candidates for appointment or promotion to any category, class or service prepared by it in exercise of the powers conferred on it by the Andhra Pradesh State Electricity Board Service Regulations, Part III for any service, or any order of revision passed under Regulation 24(2) or Regulation 25 (a), if it was passed under any mistake, whether of fact or of law, or in ignorance of any material fact or for any other sufficient cause. Therefore, the Regulation 26 is circumscribed by several regulations. While integrating various cadres and finding anomalous therein, the Board had issued Memo dated 2.4.1994. This was made a categorical mention in the very same memo.

17. The learned counsel for the respondent in the writ petition of LDCs contended that while regulation 26 of APSEB Service Regulation part-II deals with seniority, Memos dated 02.04.1994 and 16.07.2002 deal with preparation of integrated seniority list, operating in two different fields without any contradiction. We are of the opinion that in the absence of statutory rules or regulations dealing with the

matter, the executive instructions govern the field. When there is no regulation dealing with integrated seniority list, APSEB and NPDC are well within their powers for the purpose of guidance of their officers in issuing the said memos dated 02.04.1994 and 16.07.2002 and they were not in contradiction with Regulation 26. Without questioning the original memo dated 02.04.1994 issued by the erstwhile APSEB, questioning the consequential memo dated 16.07.2002 does not hold good. The NPDC has discretion under Regulation 25(b) as appointing authority to issue guidelines in the matter of preparation of integrated seniority list for providing a reasonable/rationale basis for exercising the discretion, it cannot be invalidated on the said score.

18. Admittedly no integrated seniority list of Lower Division Clerks and Typists has been prepared even till today. The petitioner also did not question any earlier promotions made to the category of U.D.Cs. Their grievance is that they were superceded by the respondents in the matter of promotions to the category of U.D.Cs on the basis of reckoning of interse seniority between the category of Typists and respondents i.e. the category of L.D.Cs on the basis of illegal conferment of seniority to respondents by virtue of instructions made in the memorandum dated 16.07.2002 which was in turn based on an earlier memorandum, dated 2.4.1994.

19. It is important to note that the Regulation 11 of A.P.S.E.B., Regulation Part-III read with Regulation 12, Typist posts and L.D.C. posts are interchangeable, in fact the 14th petitioner in the Writ Petition No. 13685 of 2002 after initial appointment as Typist was converted as a Lower Division Clerk and he currently belongs to the category of L.D.Cs, as the respondents 4 to 8. This is one way of circumventing the training intended for LDCs, however he can claim seniority as Typists claim – over taking all LDCs in the process. Therefore, the Typists cannot sit above the L.D.Cs.

20. When a similar problem has cropped up, the Reserve Bank of India has formulated a combined seniority scheme by a circular in Reserve Bank of India v. N.C. Paliwal[3]. Their Lordships considering the scheme opined,

> "There can be no doubt that it is open to the State to lay down any rule which it thinks appropriate for determining seniority in service and it is not competent to the Court to strike down such rule on the ground that in its opinion another rule would have been better or more appropriate. The only enquiry, which the Court can make, is whether the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst emplo7yees belonging to the same class. The rule devised by the Reserve Bank for determining the seniority of the employees from non-clerical cadre vis-à-vis those already in the clerical cadre attempted to strike a just balance between the conflicting claims of non-clerical and clerical staff and it cannot be condemned as arbitrary or discriminatory."

21. When a dispute arose in regard to service between two sources and when the rules were silent on subject, their Lordships of the Supreme Court in ***the Direct Recruit Class-II Engineering Officers" Association v. State of Maharashtra***[4] opined that, the same could be prescribed by way of executive instructions. Their Lordships further observed, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule. The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject. Their Lordships further opined that, the decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinized for finding out any possible error. It is not in the interest of service to unsettle a

settled position.

22. At the cost of repetition, we may state that the Parliament follows no particular policy in choosing the forms of delegated legislation and there is a wide range of varieties and nomenclature. An act may empower an authority to make regulations, rules or byelaws, to make orders, or to give directions. ***William Wade and Christopher Forsyth, in the Book on Administrative Law (Clarendon Press, Oxford 7th Edition) at page 869***, observed,

> "In the United States the assimilation of different categories has been carried further, and the courts have enforced administrative rules and practices merely because they have been followed in fact rather than because they have statutory backing. The dismissal of a civil servant has thus been set aside because the department's internal rules were not observed and a regulatory commission has been held bound to follow its own 'usual practice' when this was known to and relied upon by the public. He that takes the procedural sword shall perish with that sword, said Mr. Justice Frankfurter. English judges have confined themselves to cases where formal rules have been promulgated, as in the case of the Criminal Injuries Compensation Board and other cases mentioned earlier, and to cases where an established practice creates a legitimate expectation of a fair hearing. So they also have made a breach in the legal barrier, and this may be exploited further."

23. The learned counsel for the appellants contended that the transmission of A.P. Vidhyutsoudha issued orders in T.O.O.(GN(TR)-Per) Ms.No.251, dated 29.01.2001, reiterating that the period of training has to be counted for purpose of probation and increments. The learned single Judge opined that the memos were not gazetted the same was invalid as it was contrary to Sec.79 of the Electricity (Supply) Act, 1948. 24. The 2nd respondent-company is governed under the provisions of Companies At, 1952. There was no obligation for any order to be gazetted. The erstwhile Board has issued Memo, dated 2.4.1994, mentioning that integrated seniority list of

LDCs/RCs/Typists has to be drawn without disturbing the seniority list assigned during selection by taking into account the training period also. By following the said memo dated 16.07.2002, the 2nd respondent company has issued clarification.

25. As the erstwhile APSEB has become defunct with the constitution of R1 and R2 companies, the requirement of notifications issued by the company to be gazetted not arise. At least no provision is brought before us requiring 2nd respondent to publish the same in Gazette.

26. Coming to the facts, the erstwhile Board has issued instructions under memo, dated 2.4.1994 since rules were silent on the subject. All through it was not questioned only after the 2nd respondent company had reiterated the said circular in 2002, the Typists have come up with the writ petition. Evidently several employees were promoted recoursing to the above memo issued by the Board. It was holding the field for about 8 years. There were admitted latches on the part of writ petitioners in allowing the Memo to affect their promotions. Necessarily on this ground of inordinate latches, the writ petition ought to have been dismissed.

27. To sum up there is no regulation dealing with integrated seniority list either under the general regulations and special regulations, therefore, under Memo dated 02.04.1994 the erstwhile APSEB issued guidelines for preparation of integrated seniority list. We do not see how this conflicts with Regulation 26. A comprehensive reading of Regulations 10(8)(a), 23(a) and 8 would make apparently clear that the appointing authority has to fix the date of commencement of probation while integrating various cadres and preparing interse seniority list. It did so by including the training period also by exercising its statutory powers under Regulation 25(a) and (b). The Board has to prepare the list of approved candidates for appointment or promotion. When there

is reasonable/rationale basis for exercising the discretion under Regulation 25(a) by appointing authority, without contravening any of the Regulations, the list cannot be invalidated on the ground that the procedure contemplated under Section 79(c) of Electricity (Supply) Act, 1948 (in not publishing in the Gazette) was not followed. No provision is brought to our notice that notifications or circulars issued by 2nd respondent company are to be gazetted. On that score, we do not intend to struck down the circulars.

28. In view of the aforesaid reasons, the judgment of the learned Single Judge, dated 01.07.2004, in W.P. No. 13685 of 2002 is set aside. The Writ Appeals W.A. No. 1285/2004, W.A. No. 2113 of 2004 and W.A. No. 2114 of 2004 are allowed. No costs.

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B. PRAKASH RAO,J

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D. APPA RAO,J

Dated: 14 .07.2006
vp/dsr

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[1] 1983 (3) SCC 601

[2] 2003 (5) SCC 604

[3] AIR 1976 Supreme Court 2345

[4] AIR 1990 S.C. 1607